

1 **BILL NO. S-20-02-16**

2 SPECIAL ORDINANCE NO. S-37-20

3 AN ORDINANCE approving CONSTRUCTION  
4 CONTRACT #0451P - TREE REMOVAL PACKAGE -  
5 RESOLUTION/WORK ORDER #0451P between  
6 WHEATCRAFT TREE AND LAWN and the City of Fort  
Wayne, Indiana, in connection with the Board of Public  
Works.

7 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**  
8 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

9 **SECTION 1.** That the CONSTRUCTION CONTRACT #0451P -  
10 TREE REMOVAL PACKAGE - RESOLUTION/WORK ORDER #0451P - by and  
11 between WHEATCRAFT TREE AND LAWN and the City of Fort Wayne, Indiana,  
12 in connection with the Board of Public Works, is hereby ratified, and affirmed and  
13 approved in all respects, respectfully for:  
14

15 All labor, insurance, material, equipment, tools, power,  
16 transportation, miscellaneous equipment, etc., necessary for  
17 project will include the cutting down of the trees in the City ROW  
18 affecting the 50/50, Misc. ROW Package and any other Public  
19 Works project in the Right of Way. These trees are being bid  
out by unit cost per the diameter of the tree. This will include the  
removal and grinding of the tree 8" below grade including the  
chipping and hauling of the tree;

20 involving a total unit sum cost of TWENTY-THREE THOUSAND SIX HUNDRED  
21 SEVENTY AND 00/100 DOLLARS (\$23,670.00 – not to exceed a total cost of  
22 \$165,000.00). A copy of said Contract is on file with the Office of the City Clerk and  
23 made available for public inspection, according to law.  
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## Notice of Award

2/11/2020

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Project: 2020 Tree Removal Package

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Owner: City of Fort Wayne Board of Works

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Resolution/Work Order #0451P

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Bidder: Wheatacraft Tree and Lawn

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Bidder's Address: 4740 Industrial Road

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Fort Wayne, IN 46825

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You are notified that your Bid dated 2/6/2020 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for 2020 Tree Removal Package

This project will include the cutting down of the trees in the City ROW affecting the 50/50, Misc. ROW Package and any other Public Works project in the Right of Way. These trees are being bid out by unit cost per the diameter of the tree. This will include the removal and grinding of the tree 8" below grade including the chipping and hauling of the tree

The Contract Price of your Contract is based off of the total sum unit prices of \$23,670.00 with a not to exceed \$165,000.00 total cost

1 copy of the proposed Construction Contract (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within [10] days of the date you receive this Notice of Award.

1. Deliver to the Owner [1] fully executed counterparts of the Construction Contract.
2. Deliver with the executed Agreement the Contract security [Bonds] as specified in the Instructions to Bidders.
  - a. Performance Bond
  - b. Payment Bond
  - c. Certificates of Insurance
3. Deliver evidence of successful Bidder's Affirmative Action Plan; OR, executed City of Fort Wayne Affirmative Action Program document, pursuant to Article 19 of the Instructions to Bidders.
4. Deliver executed Drug Policy Acknowledgement Form. (For projects over \$150,000.00 a copy of your drug testing program is required.)
5. Deliver executed E-Verify Affidavit.



## Notice of Award

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited. Contractor will be allowed an additional 11 calendar days to submit Bonds.

Within thirty days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement.

**CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS**

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**Shan Gunawardena, Chair**

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**Kumar Menon, Member**

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**Mike Avila, Member**

**ATTEST:**

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**Michelle Fulk-Vondran, Clerk**

Date: \_\_\_\_\_

cc: Project Manager





**0451P - 2020 Tree Removal Package (#6651325)**

Owner: Public Works

Solicitor: Fort Wayne IN, City of

02/06/2020 02:00 PM EST

Section		Titl Line		Item Code	Item Description	UofM	Quantity	Unit Price	Extension	Wheatcraft Tree and Lawn Service
0451p - Tree Removal Package										\$13,670.00
	1		1	0-6"	DIAMETER TREE TO REMOVE	EA	1	\$250.00	\$250.00	
	2		2	6-12"	DIAMETER TREE TO REMOVE	EA	1	\$500.00	\$500.00	
	3		3	12-18"	DIAMETER TREE TO REMOVE	EA	1	\$795.00	\$795.00	
	4		4	18"-24"	DIAMETER TREE TO REMOVE	EA	1	\$975.00	\$975.00	
	5		5	24-30"	DIAMETER TREE TO REMOVE	EA	1	\$1,100.00	\$1,100.00	
	6		6	30-36"	DIAMETER TREE TO REMOVE	EA	1	\$1,400.00	\$1,400.00	
	7		7	36-42"	DIAMETER TREE TO REMOVE	EA	1	\$1,900.00	\$1,900.00	
	8		8	42-48"	DIAMETER TREE TO REMOVE	EA	1	\$2,200.00	\$2,200.00	
	9		9	48"+	DIAMETER TREE TO REMOVE	EA	1	\$3,300.00	\$3,300.00	
	10		10	0-24"	DIAMETER STUMP GRIND	EA	1	\$450.00	\$450.00	
	11		11	24"-48"	DIAMETER STUMP GRIND	EA	1	\$800.00	\$800.00	
Allowance	12		12	Work Allowance		LUMP SUM	1	\$10,000.00	\$10,000.00	
<b>Base Bid Total:</b>									<b>\$23,670.00</b>	

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

RESOLUTION/WORK ORDER # 0451P

This Agreement is by and between the City of Fort Wayne – Board of Public Works ("Owner") and Wheatcraft Tree and Lawn ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: This project will include the cutting down of the trees in the City ROW affecting the 50/50, Misc. ROW Package and any other Public Works project in the Right of Way. These trees are being bid out by unit cost per the diameter of the tree. This will include the removal and grinding of the tree 8" below grade including the chipping and hauling of the tree

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:  
2020 Tree Removal Package

## ARTICLE 3—ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by Public Works Engineering.

## ARTICLE 4—CONTRACT TIMES

### 4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### 4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before 10/23/2020, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 10/30/2020.

### 4.03 *Milestones*

A. Parts of the Work must be substantially completed on or before the following Milestone(s):

1. Milestone 1 [N/A]
2. Milestone 2 [N/A]
3. Milestone 3 [N/A]

#### 4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner up to \$1000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner up to \$1000 for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones:* Contractor shall pay Owner up to \$1000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
  - B. The total sum unit prices of \$23,670.00 with a not to exceed \$165,000.00 total cost.

#### ARTICLE 6—PAYMENT PROCEDURES

##### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

##### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment no more often than every 30 days during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that

such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
  - a. 95 percent of the value of the Work completed (with the balance being retainage).
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

### ARTICLE 7—CONTRACT DOCUMENTS

#### 7.01 *Contents*

- A. The Contract Documents consist of all of the following:
  1. This Agreement.
  2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. General Conditions.
  4. Supplementary Conditions.
  5. Specifications as listed in the table of contents of the project manual (copy of list attached).
  6. Drawings (not attached but incorporated by reference) consisting of [N/A] sheets with each sheet bearing the following general title: [N/A].
  7. Addenda (numbers [1] to [1], inclusive).
  8. Exhibits to this Agreement (enumerated as follows):
    - a. Drug Policy Acknowledgement Form (Project Bids under \$150,000.00) or Written copy of Contractors Drug Policy (Project Bids over \$150,000.00)
    - b. E-Verify Affidavit

- c. Escrow account agreement
- 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
  - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

#### **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

##### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data Identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques,

sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the

Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ACKNOWLEDGMENT

STATE OF INDIANA )  
                          SS: )  
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared the within named \_\_\_\_\_ who being by me first duly sworn upon his oath says that he is the \_\_\_\_\_ of \_\_\_\_\_ and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of \_\_\_\_\_ for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires:

Resident of \_\_\_\_\_ County.

ACKNOWLEDGMENT

STATE OF INDIANA )  
                          SS: )  
COUNTY OF ALLEN )

BEFORE ME, a Notary Public, in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared the within named **Thomas C. Henry, Shan Gunawardena, Kumar Menon, Mike Avila, and Michelle Fulk-Vondran**, by me personally known, who being by me duly sworn said that they are respectively the **Mayor of the City of Fort Wayne, and Chairman, Members, and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires:

Resident of \_\_\_\_\_ County.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement (Contract/Resolution Number 0451P).

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

**CONTRACTOR**

**OWNER**

Wheatcraft Tree and Lawn

CITY OF FORT WAYNE

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

THOMAS C. HENRY, MAYOR

TITLE: \_\_\_\_\_

BOARD OF PUBLIC WORKS

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

(Date signed by Contractor)

SHAN GUNAWARDENA, CHAIR

Address for giving notices:

BY: \_\_\_\_\_

KUMAR MENON, MEMBER

\_\_\_\_\_

BY: \_\_\_\_\_

MIKE AVILA, MEMBER

\_\_\_\_\_

\_\_\_\_\_

ATTEST: \_\_\_\_\_

MICHELLE FULK-VONDRAN, CLERK

DATE: \_\_\_\_\_

(Date signed by Board)

# COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

## RFPs & BIDS

Bid/RFP #	0451P, TREE REMOVAL PACKAGE
Awarded To	WHEATCRAFT TREE AND LANDSCAPE SERVICES
Amount	Total Unit Sum price \$23,670.00 (not to exceed \$250,000)
Conflict of interest on file?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Number of Registrants	4
Number of Bidders	4
Required Attachments	RFPs -- attach Award Matrix; Bids -- attach Tab Sheet

## EXTENSIONS

Date Last Bid Out	
# Extensions Granted To Date	

## SPECIAL PROCUREMENT

Contract #/ID <i>(State, Federal, Piggyback--Authority)</i>	
Sole Source/ Compatibility Justification	

## BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If no, explain below</i>
If not lowest, explain	

# COUNCIL DIGEST SHEET

## COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	Total Unit Sum Price of \$23,670.00 (not to exceed \$165,000)
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## DESCRIPTION OF PROJECT / NEED

<i>Identify need for project &amp; describe project; attach supporting documents as necessary.</i>	This project will include the cutting down of the trees in the Right of Way affecting the 50/50 Cost share package, Miscellaneous Package and any other Public Works Project in the Right of Way. These trees are being big out by unit cost per the diameter of the tree. This will include the removal and grinding of the tree 8' below grade including the chipping and hauling of the tree.

## REQUEST FOR SUSPENSION OF RULES

<i>Provide justification if prior approval is being requested.</i>	NA

## FUNDING SOURCE

<i>Account Information.</i>	LIT-ED & LIT-NR

**REPORT OF COMMITTEE ON PUBLIC WORKS  
March 10, 2020**

***Paul Ensley Chair***

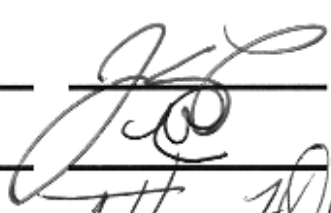
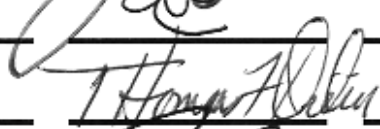


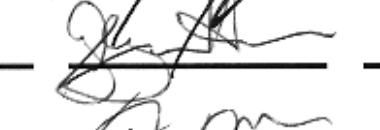
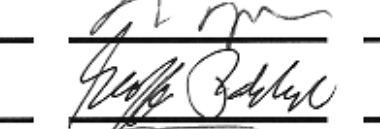


***Michelle Chambers Co-Chair***

***All Council Members***

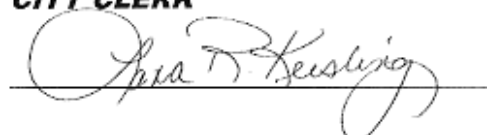
An Ordinance approving Construction Contract #0451P – Tree Removal Package – Resolution/Work Order #0451P between Wheatcraft Tree and Lawn and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

*Involving a total unit sum cost of \$23,670.00 – not to exceed a total cost of \$165,000.00*

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Ensley.

Read the second time by title and referred to the Public Works Committee.

Read the third time in full and on motion by Councilman Ensley, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: March 10, 2020




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LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-20-02-16 on the 10th day of March, 2020

ATTEST:




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LANA R. KEESLING  
CITY CLERK




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PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th of March 2020, at the hour of 10:00 o'clock A.M. E.S.T.




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LANA R. KEESLING, CITY CLERK

Approved and signed by me this 11<sup>th</sup> day of MARCH 2020, at the hour of 10:00 o'clock AM E.S.T.




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THOMAS C. HENRY, MAYOR

